

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 947 of 1995

in

SPECIAL CIVIL APPLICATION No 4056 of 1990

and

L.P.A.No.948 of 1995

in

SCA No 4057 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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UTTAMBHAI DHANABHAI

Versus

COMPETENT AUTHORITY

&

Thakorebhai Bhanabhai

vs

Competent Authority

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Appearance: in both the matters

MR JR NANAVATI/Ms. K.A.Mehta for Petitioner  
Mr.Tushar Sompura, A.G.P. for respondents

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE S.D.PANDIT  
Date of decision: 18/06/96

ORAL JUDGEMENT(per: Thakker.J)

Admitted.

2. Mr. T.S.Sompura learned A.G.P. waives service of notice of admission on behalf of respondents.

3. These two appeals have been filed against a common order dated September 16,1995 passed by the learned single Judge dismissing SCAs Nos. 4056/90 and 4057/909 filed by the present appellants-petitioners. Both the appeals raise common question of law and fact. It is therefore, proper to dispose of both the appeals by this common order.

3. It is the case of the appellants that respondent no.1-Competent Authority and Ex-officio Additional Collector, Urban Land Ceiling, Nanpura, Surat passed an order on October 30, 1986 by which some portion of the land was declared as surplus and vacant under the provisions of the Urban Land(Ceiling & Regulations)Act 1976(hereinafter referred to as the Act).

4. The case of the appellants is that even though the land cannot be said to be vacant land so as to bring it within the provisions of the said Act, an illegal order was passed.

5. Being aggrieved by the said order two appeals came to be preferred by the appellants The respondent no.2-Secretary, Urban Land Ceiling (Revenue Department) Ahmedabad by an order dated April 25,1989 dismissed both the appeals. The appellants-petitioners in these circumstances were constrained to approach this Court by filing the aforesaid two SCAs. The learned single Judge has dismissed both the petitions and hence the appellants

have challenged that order by filing the present LPAs.

6. Mrs. Mehta, the learned counsel for the appellants raised various contentions in both the appeals. It is not necessary for us to deal with all those contentions but suffice it to say that on a short ground both the appeals are required to be allowed. It is contended that the appellants had made construction over the land in question. If it is so, the argument proceeded, that the provisions of the said Act would not apply to the said land over which there is construction. It cannot be said to be vacant land within the meaning of the Act. Our attention was invited by the learned counsel for the appellants to Raja Chithi issued by the municipality on May 27, 1985. Attention of the learned single Judge was also drawn to the said Raja Chithi. The learned single Judge has observed in his judgment that merely from the fact that a Raja Chithi was issued, it cannot be said that construction was put up by the appellants. Mrs. Mehta further contended that it was not only on the basis of the Raja Chithi that a contention was raised by the appellants that construction was made. In fact an application was made before the respondent no.1, certified copy was shown to the court at the time of hearing of the appeals and xerox copies are produced. Mrs. Mehta submitted that the said application is part of the record before the respondent no.1. Certified copy of the same was obtained by the appellants from the record of the respondent no.1. Our attention was also drawn to Form-A said to have been produced before respondent no.1 from which also a contention was raised that construction was very much there. We may make it clear that we are not expressing any opinion as to the correctness or otherwise of the aforesaid documents. However, the fact remains that as per the statement made by the learned counsel for the appellants, the documents are on record, the certified copy of which has been shown to the court and xerox copies have been produced. In the circumstances, we are of the opinion that it is incumbent upon the authority below to consider and to decide as to whether provisions of the Act would apply to the land in question or not.

7. On this short ground alone and without discussing anything more, both the appeals are allowed. Orders passed by the authorities are quashed and set aside and the matters are remanded before the respondent no.1 with a direction to pass appropriate order in accordance with law. No order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.J)

for correction pl. see original